

# BOARD OF ZONING APPEALS

## MINUTES

**6:30 PM**

**June 15, 2016**

**City Council Chambers**

**MEMBERS PRESENT:** Bill Burton, George Papandreas, Linda Herbst, Jim Shaffer and Colin Wattleworth

**MEMBERS ABSENT:** None

**STAFF:** Chris Fletcher, AICP and John Whitmore, AICP

- I. CALL TO ORDER AND ROLL CALL:** Burton called the meeting to order at 6:30 p.m. and read the standard explanation of the how the Board conducts business and rules for public comments.

Papandreas stated he received a text message to inform him the meeting was not being aired on television. Fletcher checked with the videographer who then stated the equipment was working.

**II. MATTERS OF BUSINESS:**

- A.** Minutes for the May 18, 2016 hearing special hearing: Papandreas moved to approve as presented; seconded by Herbst. Motion carried unanimously.

**III. UNFINISHED BUSINESS:** None.

**IV. NEW BUSINESS:**

- A. V16-14 / Stephen Nelson / 1220 Lions Avenue:** Request by Stephen Nelson, for variance relief from Article 1335.04 concerning setback encroachments at 1220 Lions Avenue; Tax Map 7, Parcel 30; R-1, Single-Family Residential District.

Whitmore presented the Staff Report.

Burton recognized Stephen Nelson of 1220 Lions Avenue who stated in order to have a structure big enough for two cars a zero lot line variance is needed due to the position of the house and the garage. Nelson stated he intends to get a survey to ensure the lot line is established and will set the structure back 4-6 inches to ensure an encroachment does not happen.

Burton asked why the applicant wants a larger garage than the typical two car garage. Nelson explained that extra storage space is needed and noted the variance would still be needed if a smaller garage were chosen due to the position of the house.

Papandreas asked if the corner would stay the same and expansion would only take place towards the yard. Nelson confirmed. Papandreas asked for the distance between the back of

the house and the proposed garage. Nelson stated the distance is approximately 10.5 to 12 feet and noted there are corners on the house that could be problematic when backing out.

There being no further comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petition. There being no comments, Burton declared the public hearing closed and asked for Staff recommendations.

Whitmore read the Staff recommendations.

Papandreas made a motion to find in the affirmative for the all the Findings of Facts for V16-14 as revised; seconded by Shaffer. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

- A) Access is not substantially impugned – existing driveway location remains the same.
- B) Drainage to and from property will not be negatively impacted. New construction will more effectively gather and direct snow and water thus lessening impact to adjacent properties.
- C) Visually new structure will not be an impairment to adjacent property sight lines nor impair views. New garage will be designed and built to match existing home thus improving neighborhood ambience (ref: Attached photos)

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

Existing garage sits on lot lines on the property's corner. New structure will be an expansion with improved retaining walls and structures.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

- A) Current arrangement of house and garage does not permit safe and effect storage of two modern cars. (i.e. typical SUV's)
- B) Parking on property requires "single file" vehicle arrangement which requires increased intrusion of vehicles onto Lions Avenue to "unstack" cars. This increases vehicle interaction with neighbors and public to remove cars from property.
- C) New structure allows for improved safer more practical parking/storage of vehicles within the property.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

This garage expansion doesn't impugn the property rights of neighborhood property primarily due to the neat "like kind" replacement of the garage structure. This improvement, on the same corner, is the only practical option for effective parking on this property.

Shaffer moved to grant approval for Case No. V16-14 as requested without conditions; seconded by Papandreas. Motion carried unanimously.

Burton reminded Mr. Nelson that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**B. CU16-03 / Christian & Missionary Alliance Church / Elmhurst Street:** Request by Lisa Mardis of Project Management Services, on behalf of Christian & Missionary Alliance Church, for conditional use approval of a "Church or Place Of Worship" use on Elmhurst Street; Tax Map 10, Parcels 37, 38 and 39; R-1, Single-Family Residential. **POSTPONED AT THE REQUEST OF THE PETITIONER**

**C. CU16-04 / James Kozak / 633 Astor Avenue:** Request by James Kozak, for conditional use approval of a "Class 2 Home Occupation" at 633 Astor Avenue; Tax Map 40, Parcel 542; R-1A, Single-Family Residential District.

Burton recognized James Kozak of 633 Astor Avenue who explained he would like to have a commercial kitchen built into his garage and will be all electric with no open flames. Kozak explained there will be no added traffic to the street with only a UPS delivery once a month.

Papandreas asked if the garage is currently being used to park a car. Kozak stated the garage has been used for storage and will be completely emptied and redone and will be inspected by the Health Department. Kozak stated he will be making hot sauce once a month and hopes to expand his business.

Burton asked if any fumes would be expelled while making the hot sauce. Kozak stated there will be a smell while making the hot sauce but noted it only takes two hours to make and his next door neighbor to the garage would be speaking in support of the petition.

Wattleworth asked if an exhaust fan would be needed. Kozak stated the fire department will not require an exhaust fan and a regular fan can be used.

Burton asked how many times it would take for him to outgrow his business. Kozak explained that if he is making it more than once a week then he would be at the point to move to a separate location, however, as of right now he is producing 30 cases a month which is sufficient.

There being no further comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the petition.

Burton recognized Carlton Thompson of 625 Astor Avenue who spoke in support of the petition and noted he lives next door to the petitioner. Thompson stated there are already UPS trucks on their street daily and expressed he doesn't feel the traffic, trash or smell will be an issue.

There being no further comments, Burton declared the public hearing closed and asked for Staff recommendations.

Whitmore read the Staff recommendations.

Wattleworth made a motion to find in the affirmative for the all the Findings of Facts for CU16-04 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – The home occupation will be compatible with residential uses of the dwelling, in that:

The living area of the home will not change only minor changes to the interior of the garage area.

Finding of Fact No. 2 – The home occupation will not change the residential character of the dwelling, in that:

Nothing will be different or disturbed to the dwelling except minor additions to the interior portion of the garage.

Finding of Fact No. 3 – The home occupation will not detract from the residential character of the neighborhood, in that:

Changes only to the interior portion of the integral basement garage. No change will be visible from the exterior of the home and no additional traffic will be generated relating to customers as all sales will be completed off-site at stores, restaurants, and through the internet.

Finding of Fact No. 4 – Congestion in the streets will not be increased, in that:

No direct customer sales will be permitted at the home as per related conditions imposed by the Board of Zoning Appeals. With the exception of deliveries of materials and pickup of product, no large vehicles will be used for delivery so no added congestion to vehicle access, movement, or on-street parking is anticipated.

Papandreas moved to grant approval for Case No. CU16-04 as requested with conditions; seconded by Shaffer. Motion carried unanimously.

*NOTE: The following conditions were included in the motion.*

1. That the petitioner shall meet all related supplemental regulations specified in Article 1331.06(2) et seq. of the Planning and Zoning Code.
2. That if the petitioner, as the sole beneficiary of this conditional use approval, wishes to make changes in the conduct of the business that departs from the description in the application or from any other conditions or restrictions imposed by the Board of Zoning Appeals, the holder must obtain prior permission of the Board of Zoning Appeals.
3. That direct customer sales at the home shall not be permitted without prior permission of the Board of Zoning Appeals thereby mitigating any related increase in congestion in the streets within the immediate area.
4. That operation of the home occupation shall not interfere with nor reduce the number of on-site parking spaces below the two (2) existing on-site parking spaces required for "Single-Family Dwelling" uses.
5. That the conditional use approval granted herein is specific to the petitioner and may not be transferred without prior approval by the Board of Zoning Appeals.

Burton reminded Mr. Kozak that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**D. V15-65 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1349.04(A)(2) to exceed the maximum front setback standard; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

Burton asked if the Board would like to combine the petitions into one presentation by the applicant. Shaffer suggested each petition be presented separately. Burton agreed and stated the petitions would be separated.

Fletcher presented the combined Staff Report for variance cases V15-65 through and including V15-71.

Burton recognized John Williams of Williams and Associates from Athens Georgia who stated he represented Landmark Properties. Williams presented a Power Point presentation to explain the project proposed for 1303 University Avenue.

Shaffer asked how wide the sidewalk will be. Williams explained the sidewalk will be between eight and twelve feet setback from the right-of-way.

Wattleworth asked if the existing sidewalk is eight (8) feet. Fletcher explained the setback will be in addition to the existing sidewalk, which will increase the functional width of the sidewalk.

Papandreas asked if the setback would be considered the ground floor. Williams confirmed and said it would be the ground floor frontage on University and there will be units and parking on the back side of the building.

Williams explained the proposed front yard setback would reduce the canyon effect.

Williams explained the rear yard setback would be minimal and would only be located nine (9) inches closer than the existing building.

Papandreas asked if the pump station illustrated on the PowerPoint presentation could be eliminated. Williams explained that the pump station has to remain in order to access the sanitary sewer.

Wattleworth asked stormwater would be pumped out of the pump station. Williams stated it is only sanitary.

Wattleworth inquired about the location of stormwater retention. Williams explained that stormwater management should be handled underground but noted final design would be addressed during the building permit application phase of the development.

Williams explained the building had been setback to allow greater street and sun activity.

Papandreas asked what levels the building had been set back from the University Avenue exposure. Williams provided an illustration to show how the building would be setback at different levels and noted it would be between two and five feet each time.

Williams provided an illustration to explain the maximum driveway curb cut width on University Avenue and expressed a minimum variance had been requested to provide the best ingress and egress off of University.

Burton referred to the illustration and asked if the turns into the entry way are located in the City Street. Williams confirmed and stated they are tying in to the existing curb line.

Burton asked how far the driveway entrance is from Fayette Street and the traffic light. Fletcher stated it is well beyond the minimum requirement and noted the distance is approximately 200 feet.

Papandreas expressed concerns with the 55 feet of driveway as it could be dangerous to pedestrians with the possibility of cars turning in at slightly higher speeds. Williams explained that pedestrian crossings will take place predominately where the right-of-way line is located and crossing in the 55 foot area would not be promoted.

Wattleworth expressed concerns with the 55 foot area as well and asked what could be done to aid in the safety should people cross at that area. Williams suggested utilizing pedestrian crossing signs.

Wattleworth noted there is little space for pedestrians to stand due to the way the curb cut has been designed. Williams noted there are sidewalks across the front of the building.

Herbst asked for the distance from the center point to the corner of Fayette Street. Williams stated there is 240 feet from the center point to Fayette Street and 290 feet from the center point to Walnut Street.

Wattleworth expressed the B-4 District should be pedestrian friendly and felt more space is needed at the corner of Fayette Street. Williams noted the minimum DOH regulations are 10 feet for a curb radius.

Wattleworth expressed that DOH favors vehicular traffic over pedestrian traffic. Williams noted they do not have an option but to meet the DOH regulations.

Burton asked which law would be applied for a state highway. Fletcher explained that both laws apply however the WVDOH would provide access and permits if designed to their standards and if their standards are wider than the City standards then they would not give permits unless they meet their design requirements.

Burton asked if the design presented is by WVDOH. Williams explained that WVDOH is between 10 and 30 and their design proposed is 18 feet and stated that minimum WVDOH requirements are more than the maximum curb cut width allowed by the City.

Burton recognized John Triebert of BKV group who suggested decorative pavers to define the separation between vehicle and pedestrian spaces.

Papandreas asked if the WVDOH could overrule the decision made by the BZA. Fletcher explained a denial by the BZA could be appeals to Circuit Court where the petitioner would argue WVDOH is the jurisdiction having authority of driveway entrance placement, design, and permitting onto state highways.

Williams stated they are willing to do the minimum that WVDOH requires but noted it will exceed the maximum required by the City.

Fletcher noted that the Board could include a condition that variance relief granted would only be for the minimum design width permitted by WVDOH.

Herbst asked if something would be placed in the street to prevent people from turning left. Williams explained a pork chop style had been explored but made the driveway wider as it would push the radius outward. Williams noted other options are being explored.

Williams explained the maximum driveway curb cut width on Walnut Street noting variance relief would allow for consolidating three (3) separate service entrances so there would be no issues with garbage, trash or loading.

Burton asked for the total width of the three (3) entrances. Williams stated the total width is approximately 60 feet.

Wattleworth asked if the area would accommodate tractor trailers. Williams noted they do not have a big enough use for tractor trailers and that box trucks will be used for making deliveries.

Burton asked how often solid waste would be picked up. Williams explained that depends on the size of the dumpster and could be 2-3 times or done on an as-needed basis.

Burton asked if the trucks would maneuver to pick up the sanitation. Williams explained the trucks will back into the bay off the street and the width of the driveway will allow for ample room to do so.

Burton asked what has been done to mitigate ice and snow during the winter months. Williams stated they would work with the solid waste company to work through the winter months.

Wattleworth asked if the retail space included three (3) levels. Williams further explained the retail space labeled "L1" on the site plan and noted it includes one level off of University Avenue.

Williams explained the variance request for maximum parking.

Wattleworth asked why City Codes include regulations for maximum parking for the B-4 District. Fletcher explained the maximum standard provided in all business districts.

Williams explained the variance request for transparency.

Burton inquired as to where the utilities run into the building. Williams stated the utilities are run at various locations.

Burton referred to the retail space and asked how much glass will be included in that area. Williams referred to the PowerPoint and explained the sections that would include glass. Burton asked if the elevator would include glass windows to provide more transparency. Williams noted the elevator does not abut the exterior wall and that providing glazing as described would not be allowed to be counted towards the minimum transparency percentage as the standard is written. Williams suggested an alternate design using spandrel glazing to give the appearance of glass.

Fletcher explained that spandrel glazing in the area of concern could not be counted toward minimum transparency requirements but could meet the spirit and intent of breaking up the wall at grade.

Burton asked if the Fire Department would allow the same type of glass in the mechanical room for fire protection. Williams noted it is usually surrounded by a concrete wall but stated he would be willing to discuss with the Fire Marshall to explore the idea.

Wattleworth asked what areas on University Avenue will include glass that did not have it before. Williams explained the spaces are in the same area and that the glazing just got wider.

Wattleworth referred to the commercial space area and noted the meeting packet stated there is 13,351 square feet of commercial space as well as 8,400 of retail and asked for further explanation as it was not stated clearly in the presentation.

Williams clarified there is 8,500 square feet of true leasable retail and the rest of the square footage will be where the leasing center is located. Wattleworth expressed the area should not be called commercial space as it would be supporting their residential space.

Wattleworth referred to a lounge area and asked why that would be labeled as part of the commercial space as a student lounge is not commercial space. Williams explained the lounge area is part of the indoor amenity package.

Burton noted it depends on what is stated in the Planning and Zoning Code on whether a lounge would be permitted to be considered as part of commercial space. Wattleworth asked for clarification on the Code.

Fletcher noted the question about commercial space is not a part of variance before the Board of Zoning Appeals and a discussion could be had at a later point on whether Staff interpreted the Code correctly.

Wattleworth inquired on how the retail area had been calculated and how it relates to the parking as the project will be light on retail and heavy on residential.

Wattleworth expressed there is a mistake in how the retail had been calculated especially if the parking variance should be granted. Fletcher noted the land use composition is not an issue being brought before the Board under the variance petitions.

Burton noted the Board can only consider the petitions currently presented to them.

Wattleworth expressed disfavor in allowing student lounges in commercial spaces.

Burton stated there would be a five minute break.

There being no further comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-65.

Burton recognized Joseph Yip of 1389 University Avenue who distributed documents to the Board members and noted he was approached by agents representing Landmark Properties with an offer to purchase his property adjacent to the proposed Standard project. Yip stated he had an expansion plan that was brought before the City Planner in December 2015 and was told it would not be approved due to front and rear setbacks and the entrance to University Avenue. Yip stated he revised the plan and after reviewing, the City Planner urged him to follow the code. Yip asked that everyone follow the same set of codes and noted that if the variance is approved then it would allow for an additional 1,142 square feet of space which is equal to five additional units.

Burton recognized Sam Simon, counsel for James Giuliani of 256 Prairie Avenue who referred to Article 1389.03 and stated a variance has to fit into an undue hardship of some type and not be handed out sparingly. Simon stated the purpose of a variance has to be something the land



creates and is not created by the developer alone. Simon stated the developers could make the building smaller and their claim of an economic loss is not an undue hardship.

Burton recognized James Giuliani of 256 Prairie Avenue who stated a variance is a literal interpretation of taking and breaking the law. Giuliani expressed that the developers could redesign their building and asked the Board to look at the reasons claimed for the variances. Giuliani noted that the Downtown Strategic Plan desires a straight façade and expressed that the proposed development is not a mixed use dwelling and the retail space does not meet the 20 percent floor ratio.

There being no further comments, Burton offered Williams a chance for rebuttal.

Williams stated they are not requesting to encroach into a front yard setback and explained there is a non self-imposed condition due to Mr. Yip's building being located .26 feet away from the right-of-way. Williams stated they would have to meet a setback that is unattainable if they want to promote safe pedestrian movement at the corridor while burying the overhead cables. Williams clarified the request is to move away from the street and not closer.

Burton declared the public hearing closed and asked for Staff recommendations.

Fletcher read the Staff recommendations for V15-65.

Wattleworth asked if a Board member can recommend and have the Board vote on conditions for approving a variance. Fletcher confirmed and noted Staff would help wordsmith the condition.

Wattleworth asked if conditions could be placed on the cladding and retail for the project. Fletcher referred to meeting packet and noted conditions were placed on said items by the Planning Commission and explained how conditions have to be followed in addition to any new conditions made by the Board.

Wattleworth asked if a condition could be made to add more retail space. Fletcher asked how adding more retail space correlates with the maximum front setback and explained there has to be a connection between the variance and what the Board wants to put a condition on.

Papandreas noted that a bigger front makes more sense for the density of the building.

Discussion ensued on the dimensions of the proposed sidewalk. Burton asked if the sidewalk would be clear and without planters, Williams confirmed.

Burton clarified the functional width of the sidewalk would be twelve (12) feet on either side and narrowed to eight (8) feet in the middle. Williams provided an illustration to further clarify the design and dimensions of the sidewalk.

Board members decided to review the Findings of Facts separately for Case No. V15-65.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as presented by the petitioner; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 –Granting the increased setbacks along the front of the building will not affect public health, safety or welfare, or rights of adjacent property owners or residents. In fact, it will provide for greater safety because it will allow the increase in width of the sidewalk allowing greater separation

between pedestrians and vehicles. Currently at the location of proposed improvements and existing feature (Mode Roman Property) is a parking lot. Without a physical structure located adjacent to the beginning of the project allows the sidewalk to be increased in width without creating an immediate bottle neck for pedestrians.

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as presented by petitioner; seconded by Wattleworth. Motion carried unanimously.

Papandreas noted the design was smart in order to allow for more space but expressed it is a self-imposed hardship. Fletcher noted the metric is based on the location of the building next door, which is beyond the petitioner's control.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 2 –The proposed project is located within the B-4 Zoning District, which allows for buildings to be constructed at the front property line with 0' minimum and 10' maximum setback. Allowing the building to be set back from the property line will allow greater width for pedestrian sidewalk and provide a safer walking environment by greater separation between the public and vehicles. Additionally, the existing overhead utilities will be buried along the frontage of the project. The additional setback will allow the utility owners to have additional space for the maintenance of their facilities. Per conversations with the Fire Marshal, the southern end of the building has been designed to allow for additional building setback so that the fire apparatus may be parking between the building and the curb in an emergency.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as presented by petitioner; seconded by Herbst. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 3 –The variance to allow an increased set back distance allows the plan to conform to the DOH driveway requirements and the Fire Marshal's staging location between the building and the curb.

Shaffer made a motion to find in the affirmative for Finding of Fact 4 as presented by petitioner; seconded by Wattleworth. Motion carried unanimously.

Papandreas expressed the variance does not have anything to do with the canyon effect.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 4 –The request for the increase of front set back will be applied within the B-4 District. The City of Morgantown is concerned with "Canyon Effect" in and around the downtown area. Allowing the increased set back will reduce the "Canyon Effect" along the proposed development site. Additionally, the variance will allow the building to be designed within the allowable 0' to 10' setback.

Shaffer moved to grant approval for Case No. V15-65 as requested with conditions; seconded by Herbst. Motion carried unanimously.

*NOTE: The following conditions were included in the motion.*

1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.
2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**E. V15-66 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1349.04(A)(5) to encroach into the minimum rear setback standard; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-66.

Burton recognized Joseph Yip of 1389 University Avenue who stated granting the rear setback variance would allow the applicant to gain 8,879 square feet of free land and provide an additional 200 beds. Yip provided an illustration to explain the damages to his property that have come along with the fencing off of the previous Shell Gas Station. Yip stated he is experiencing increased traffic and more people trespassing on his property and noted that granting the rear setback along with the annulment of Wall Street will give the applicant .3 acres of free land which belongs to the citizens of Morgantown. Yip referred to the retaining wall located on the rear of the property and expressed concerns that emergency vehicles could not gain access should the need arise. Yip asked the Board to deny to variance request for a rear setback and expressed additional concerns with increased traffic and congestion in that area.

Burton recognized Sam Simon, on behalf of James Giuliani, who provided an illustration to explain how the lift station should be a part of the principal building and not allowed as an accessory structure. Simon referred to the definition of an accessory structure and stated there is a need for the lift station and as a result can't be an incidental to the property. Simon referred to Article 1389.03 and expressed the applicant could tuck the lift station underneath the building and make the building smaller and noted the variance is a self-imposed hardship.

Burton recognized John Sausen of Omni Associates who referred to the site plan and noted an inset along the back property line. Sausen referred to Article 1329.09 and stated the lift station does not meet the standards in the Planning and Zoning Code. Sausen stated the lift station is a primary function of the building and therefore has to be within the building envelope.

Burton recognized James Giuliani of 256 Prairie Avenue. Burton noted that Sam Simon already spoke on behalf of Mr. Giuliani and stated only one person can speak. Burton asked the Board if they wanted to hear arguments from Mr. Giuliani and the Board agreed to hear one last time. Mr. Giuliani stated the lift station was an after thought as the developers planned to access the property from Mr. Yip's property. Giuliani stated the lift station was designed as an accessory structure and expressed the building should be redesigned to include the lift station within the building. Giuliani asked that variances not be handed out like candy as it sets a precedence for others.

Burton offered the petitioner a chance at rebuttal.

Williams stated the lift station was considered an accessory structure by Staff and is not part of the current request as it has its own setbacks in which it meets. Williams noted the current variance request is for the principal building and not the accessory structure and is dictated by the irregular property line that creates the situation and is not a self-imposed condition. Williams

stated the existing building is 29 inches from where the proposed building is to be located. Williams stated this is not free land that belongs to Morgantown but a setback on a private piece of property that belongs to the applicant.

Shaffer stated the Board has to determine whether the lift station is an accessory structure. Williams stated that Staff has determined the lift station is an accessory structure and the variance request is for the principal structure.

Papandreas asked if the building can function without the lift station. Williams stated the building could function without it being at that location but noted it did not matter because the variance before the Board concerning the setback of the principal building.

Papandreas referred to the definition of an accessory structure and stated if the building can not function without the lift station then it is not an accessory structure.

Fletcher stated the accessory structure is not before the Board and a disagreement on whether it is an accessory or principal structure could be addressed in an appeal at a later date.

Wattleworth inquired on the proper time to address a mistake made by Staff.

Papandreas stated the Board has to look at what is before them, whether they agree with it or not, and decide whether the Findings of Facts make sense. Fletcher confirmed and reiterated decisions can only be made on the principal building as that is what is before them.

Williams stated he understood the appeal process.

Fletcher read the Staff recommendations for Case No. V15-66.

Board members decided to review the Findings of Facts separately for Case No. V15-66.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as presented by the petitioner; motion died for lack of second.

Shaffer noted the variance request is a self-imposed hardship.

Papandreas asked if there is access for emergency vehicles in the rear of the building. Williams explained they had met with the Fire Marshalls and they agreed to their fire access and delivery plans with no issues or concerns.

Fletcher noted that it only takes one negative for the variance to fail.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as presented by the petitioner; seconded by Papandreas. Motion carried 4-1 with Wattleworth voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 –The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because the building will be constructed entirely within the extents of the property lines. This variance is for the setback located in the back of the building. The back property line abuts against the Rails to Trails / CSX / City Right of Way. The approval of this variance will not encroach towards inhabited parcels or available real estate that can be developed in the future.

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as presented by petitioner; motion died for lack of second.

Shaffer made a motion to find in the negative for Finding of Fact 2 as presented; seconded by Papandreas. Motion carried 4-1 with Burton voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 2 – The variance does not arise from special conditions or attributes which pertain to the property for which a variance is sought because the condition or attribute for which variance relief is sought was created by the petitioner as their proposed design of the building.

Wattleworth noted the corners in the front of the building are voluntarily designed as such and asked why the same corners could not be designed the same way in the back.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as revised by Staff; motion died for lack of second.

Papandreas made a motion to find in the negative for Finding of Fact 3 as presented; seconded by Wattleworth. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 3 – The variance will not eliminate an unnecessary hardship nor permit a reasonable use of the land because no hardship exists meriting variance relief as requested.

Papandreas made a motion to find in the negative for Finding of Fact 4 as presented; seconded by Shaffer. Motion carried 4-1 with Burton voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 4 – The variance will not allow the intent of the zoning ordinance to be observed nor substantial justice done because no hardship exists meriting variance relief as requested.

Shaffer moved to deny variance request V15-66 based on the Board's Findings of Fact and conclusions; seconded by Papandreas. Motion carried unanimously.

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**F. V15-67 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1351.01(I) as it relates to minimizing canyon effects; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

Fletcher referred to the Staff Report and noted the Board must determine if a variance is needed for a canyon effect and suggested public comments be taken on the application.

Wattleworth expressed the design elements are not sufficiently incorporated as they are not noticeable and between two and five feet is not sufficient.

Wattleworth asked if the Board would vote on it if they felt there were enough design elements. Burton stated the Board first must determine that the building sufficiently incorporates design elements that preserve adequate light and air flow to public spaces.

Fletcher explained that if the Board agrees then no variance would be required.

Wattleworth stated he does not feel there are enough design elements. Shaffer disagreed.

Papandreas expressed the changes are not consistent in what has been done with other buildings.

Fletcher suggested having a public hearing prior to the Board making a decision.

There being no further comments, Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-67.

Burton recognized Joseph Yip of 1389 University Avenue who referred to an illustration to explain the proposed building will block sunlight and noted snow will not melt without the sun.

Burton recognized Sam Simon representing JKL Rentals, LLC and stated there will be a canyon effect with a building at 120 high and little to no setback. Simon noted the Findings of Facts by the Planner are only recommendations and the Board has to give a decision based on the petition and doesn't have to review each individual Finding of Fact.

Fletcher explained the Findings of Facts are presented by the petitioner and the Staff Report states that revisions were to remove inapplicable material. Fletcher also noted Staff assists the Board in wordsmithing their own findings.

Burton recognized John Sausen of Omni Associates who stated the street will primarily be in the shade and noted this is an aesthetic issue in which figure the Board should decide if this building is as desirable compared to other buildings that have been constructed in Morgantown.

Burton recognized James Giuliani of 256 Prairie Avenue who referred to the CA Living project and noted the developers were asked to redesign the building in which they did. Giuliani referred to Finding of Fact 1 and stated the building will adversely affect the adjacent property owner which is owed by Mr. Yip. Giuliani expressed the proposed building could be setback further with less stories which would not require variances. Giuliani asked the Board to take in to consideration that other developers have been asked to redesign their building and feels the same should happen for the Standard.

Burton recognized Latelle Hall of 1053 Ross Street who stated he does have not concerns with the quality of the building but noted the proposed building will run North and South and explained the sun could have an effect on Mode Roman and other surrounding buildings.

Burton offered the petitioner a chance at rebuttal.

Williams expressed the plan submitted does not need a variance as it includes both horizontal and vertical design element setbacks as requested. Williams noted the proposed building received a variance for the front yard setback and stated the project meets the building height and side yard setbacks. Williams noted the proposed building includes areas that are setback as much as 10 feet and expressed they have met the criteria to not require a variance. Williams

stated John Trieber of BKB Group was involved with the study is present and happy to answer any questions about the study. Williams noted the project is in line with the Comprehensive Plan as it is an area for increased density.

Papandreas noted the Downtown Strategic Plan and the Comprehensive Plan are not codes and therefore are not relevant when considering the proposed project.

Wattleworth expressed that design elements are setbacks and should be followed as written in the Planning and Zoning Code.

Shaffer asked for further clarification from John Trieber of the BKB Group.

Burton recognized John Trieber of 9827 Lakepoint Drive who explained the building has mass setback from the property line and that should be considered when addressing the canyon effect.

Papandreas made a motion that the proposed building does not sufficiently incorporate the design elements that preserve adequate light and air to public spaces including streets and sidewalks; seconded by Wattleworth. Motion carried 3-2 with Burton and Shaffer voting nay.

Fletcher explained the Board will need to decide whether or not to grant variance relief and if variance relief is not granted, the Board will have to develop negative Findings of Fact.

Wattleworth requested to see a diagram that was shown in the presentation to show the proposed setbacks and expressed the hand drawn diagram is not similar to what was presented in the packet.

Williams presented the requested diagram. Wattleworth stated the proposed setback does not have an effect and does not provide for more sunlight.

Papandreas inquired as to what point the building would start to setback and asked for further clarification on the setbacks.

Williams explained the setbacks start at the first floor with a setback at 2-5 feet and then again at the seventh floor with a setback at 2-5 feet. Williams noted the setback ranges from 4-10 feet.

Burton stated the Board would take a five (5) minute break while the videographer changed the disc for recording purposes.

Board members decided to review the Findings of Facts separately for Case No. V15-67.

Papandreas made a motion to find in the negative for Finding of Fact 1; seconded by Wattleworth. Motion carries 3-2 with Burton and Shaffer voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because the proposed building does not sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City's Planning and Zoning Code.

Wattleworth made a motion to find in the negative for Finding of Fact 2; seconded by Papandreas. Motion carries 3-2 with Burton and Shaffer voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 2 – The variance does not arise from special conditions or attributes which pertain to the property for which a variance is sought because the condition or attribute for which variance relief is sought was created by the petitioner and their proposed design of the building.

Papandreas made a motion to find in the negative for Finding of Fact 3; seconded by Wattleworth. Motion carried 3-2 with Burton and Shaffer voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 3 – The variance will not eliminate an unnecessary hardship nor permit a reasonable use of the land because no hardship exists meriting variance to sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City's Planning and Zoning Code.

Papandreas made a motion to find in the negative for Finding of Fact 4; seconded by Wattleworth. Motion carried 3-2 with Burton and Shaffer voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 4 – The variance will not allow the intent of the zoning ordinance to be observed nor substantial justice done to sufficiently incorporate design elements that preserve adequate light and air to public spaces including streets and sidewalks as desired in Article 1351.01(I) of the City's Planning and Zoning Code.

Shaffer moved to deny variance request V15-67 based on the Board's Findings of Fact and conclusions; seconded by Papandreas. Motion carried unanimously.

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**G. V15-68 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1351.01(D) to exceed the maximum curb cut width of a driveway at the curb line and at the right-of-way line on University Avenue; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

There being comments or questions by the Board, Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-68.

Burton recognized Joseph Yip of 1389 University Avenue who referred to an illustration to explain the location of his property and expressed concerns with the increase in vehicle and pedestrian traffic

Burton recognized Sam Simon of JKL Rentals, LLC, who referred to the Planning and Zoning code and noted that the West Virginia Supreme Court states the word "shall" represents an imperative command that leaves no room for discretion. Simon expressed the proposed curb cut is a self-imposed hardship.

Burton recognized John Sausen of the Omni Associates who noted the project has been referred to as a mixed-use dwelling which is a permitted use in the B-4 District. Sausen stated the development has also been referred to as a mixed-use development which is not listed in the



zoning ordinance as allowed in the B-4 district. Sausen expressed the project is located mid-block and noted other areas could be explored to located the curb cut.

Burton recognized James Giuliani of 256 Prairie Avenue who expressed that parking is not permitted in the front of a mixed-use dwelling. Giuliani referred to the definition of a mixed-use dwelling and expressed he did not feel this development falls under that definition. Giuliani stated that people will not utilize the enhanced walk way and will cross the street in the middle and noted that CA Living did not have to acquire any variances for curb cuts.

There being no further comments, Burton offered the petitioner a chance for rebuttal.

Williams stated that traffic has nothing to do with the variance request and explained the width of the driveway has to meet WVDOH standards, which are wider than the City will allow. Williams stated they would accept a condition on the variance request to meet the minimum standard for WVDOH which is 10 feet. Williams stated the variance is not self-imposed as they have to meet the WVDOH guidelines. Williams stated they would also accept a condition that a pedestrian pathway be added across the driveways at a narrower location.

There being no further comments, Burton asked for Staff recommendations.

Fletcher presented the Staff recommendations.

Fletcher explained conditions could be listed when reviewing the Findings of Facts.

Herbst asked who would determine where the pedestrian pathway would be located and expressed concerns with blind spots. Fletcher explained the site line and location are determined by the City Engineer.

Wattleworth expressed there is a high probability for blind spots depending on the design.

Fletcher noted the building is set back well and felt the only obstruction would be the screen wall and that could be pulled back if it became an issue.

Board members decided to review the Findings of Facts separately for Case No. V15-68.

Fletcher noted an acceptable design could be similar to driveway entrance to Spruce Street farmer's market pavilion.

The following Findings of Facts include agreed upon conditions from the Board members.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as revised; seconded by Papandreas. Motion carries 4-1 with Wattleworth voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – Granting the increased curb cuts will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the garage entrance off of University Avenue will be located approximately midway of the proposed building. The increased curb cut will allow easier maneuvers of vehicles without running over top of the curb. The extended curb width will be a benefit to vehicles wishing to travel along University Avenue by allowing vehicles to make safer and quicker maneuvers out of the way off of University Avenue.

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as presented; seconded by Herbst. Motion carries 4-1 with Wattleworth voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 2 – With the right-in-and-right-out vehicle maneuvers, lane dividers will need to be incorporated into the center of University Avenue per WVDOH recommendations. The lane dividers consist of flexible posts located along the centerline divider limiting the vehicular maneuvers to right in and right out.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as presented; seconded by Papandreas. Motion carried 4-1 with Wattleworth voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 3 – In order to provide ease of entry for vehicles, the curb radius must be increased to West Virginia Division of Highway's minimum design standards for same. With the increased curb cuts vehicles can maneuver off University Avenue a little safer and quicker in turn reducing vehicle congestion on University Avenue. With a wider exit radius, vehicles can merge onto University Avenue without running into the left lane.

Shaffer made a motion to find in the affirmative for Finding of Fact 4 as presented; seconded by Herbst. Motion carried 4-1 with Wattleworth voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 4 – With the increased curb cut, vehicles can make safer and quicker maneuvers reducing impacts to traffic flow along University Avenue.

Shaffer moved to grant approval for Case No. V15-68 as requested with conditions; seconded by Papandreas. Motion carried 4-1 with Wattleworth voting nay.

*NOTE: The following conditions were included in the motion.*

1. *That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.*
2. *That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.*
3. *That all requisite West Virginia Division of Highway access permits/agreements be obtained by the petitioner prior to building permit issuance.*
4. *That the final width of the driveway curb cut at the curb line and at the right-of-way line shall be determined by West Virginia Division of Highways' minimum width design standards for same under its access permits/agreements approval process.*
5. *That the sidewalk along the site's University Avenue frontage shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects. Further, that the point of potential conflict between pedestrian and vehicular traffic within the University Avenue driveway entrance shall, to the satisfaction of the City Engineer, be designed to encourage pedestrians to cross the subject driveway entrance at the narrower width of the driveway throat through the use of a contrast in color and/or texture and/or material and/or other design elements within the hardscape that defines the pedestrian crossing through the driveway entrance.*

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work

related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**H. V15-69 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1351.01(D) to exceed the maximum curb cut width of a driveway at the curb line and at the right-of-way line on Walnut Street; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-69.

Burton recognized Sam Simon JKL Rentals, LLC referred to the Planning and Zoning code and stated the previous variance was voted on based on the WVDOH standards and not something within the City's code. Simon expressed that variances should be considered with the Planning and Zoning code and not based on WVDOH standards. Simon noted that nothing was produced within the meeting packet regarding information obtained by WVDOH and expressed that information should be made available prior to board members voting on the petition.

Burton recognized John Sausen of Omni Associates who expressed concerns with elevation.

Burton recognized James Giuliani of 256 Prairie Avenue who stated the variance is a self-imposed and noted the project does not need a loading dock. Giuliani expressed that the Planner can only give opinions and it is the duty of the Board members to know the codes and ordinances.

There being no further comments, Burton offered the petitioner a chance at rebuttal.

Williams noted the current variance before the Board pertains to Walnut Street which does not involve WVDOH standards. Williams stated they are required to have two entrances, a loading space and an area for trash removal. Williams stated the components required have to go along Walnut Street and expressed it is better to group the entrances together as they are a part of infill development.

There being no further comments, Burton asked for Staff recommendations.

Fletcher presented the Staff recommendations.

Board members decided to review the Findings of Facts separately for Case No. V15-69.

Shaffer made a motion to find in the affirmative for Finding of Fact 1 as presented; seconded by Wattleworth. Motion carries unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – Granting the increased curb cuts along Walnut Street will not affect public health, safety or welfare, or rights of adjacent property owners or residents because the added curb cut length will provide for additional access to the building therefore reducing parking vehicles along Walnut Street. The increased curb cut will allow for easier maneuvers of extended wheel base service vehicles such as garbage trucks without running over top of the curb. The extended curb width will be a benefit to vehicles wishing to travel down Walnut Street by allowing the service vehicles to make safer and quicker maneuvers out of the way of Walnut Street.

Shaffer made a motion to find in the affirmative for Finding of Fact 2 as presented; seconded by Papandreas. Motion carries unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 2 – With the garbage facilities being located inside the building, the garbage trucks must be able to enter the building without running over top of the curb. In order to provide an appropriate curb radius for the tracking of the garbage truck to curb cut must be increased. A separate entrance was incorporated into the design to provide for off street parking of delivery vehicles requiring wider curb radius.

Shaffer made a motion to find in the affirmative for Finding of Fact 3 as presented; seconded by Herbst. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 3 – The entrance off of Walnut Street will incorporate three key components, garbage pickup, access to vehicular parking garage, and delivery vehicles. These entry points were strategically placed at a single location allowing three separate access points for accommodating the identified vehicle maneuvers. Allowing three access points will provide staging areas for the service vehicles making their necessary stops inside the building, this will allow the streets to remain open and free from obstructions. Curb radius were increased to 21 feet on the east and 25 feet on the west to provide vehicle maneuvers without running over the curbs.

Shaffer made a motion to find in the affirmative for Finding of Fact 4 as presented; seconded by Herbst. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 4 – With the increased curb cut, service vehicles will be moved off the streets allowing better traffic flow and reduced street congestion.

Shaffer moved to grant approval for Case No. V15-69 as requested with conditions; seconded by Wattleworth. Motion carried unanimously.

*NOTE: The following conditions were included in the motion.*

1. *That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.*
2. *That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.*
3. *That the final width of the driveway curb cut at the curb line and at the right-of-way line shall be determined by the City Engineer based on best practice assessment of construction documents submitted at building permit application.*
4. *That the sidewalk along site's Walnut Street frontage shall be reconstructed to the satisfaction of the City Engineer and, where practicable, incorporate design elements utilized for the High Street Streetscape Improvement Projects.*

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- I. **V15-70 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1365.04 to exceed the maximum number of parking spaces in a nonresidential district; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-70.

Burton recognized Joseph Yip of 1389 University Avenue who stated the increase in parking would cause additional traffic and delays on University Avenue and expressed disfavor in allowing additional parking spaces.

Burton recognized Sam Simon of JKL Rentals who stated that an economic hardship according to the Supreme Court does not meet the standards for a variance. Simon stated this variance is a self-imposed hardship and the proposed building is extremely large on a small piece of land and expressed concerns in pedestrian safety when crossing the street. Simon referred to the Planning and Zoning code and stated there is a miscalculation in the FAR (floor area ratio) that put them beyond the maximum allowed. Simon asks the Board to follow the Planning and Zoning code and to pay closer attention to the word shall.

Burton recognized John Sausen of Omni Associates who stated the word shall is mandatory according to the Planning and Zoning code and the code states projects "shall" not exceed the minimum or maximum parking requirement. Sausen expressed the Board should be consistent with all developers and follow the code according to the zoning districts.

Burton recognized James Giuliani of 256 Prairie Avenue who stated if the variance is granted the Board will be breaking the City code and would create tremendous hardship to the adjacent property owners. Giuliani expressed that each variance granted sets a precedence for the next developer and doesn't know how the City can justify to approve the variance to exceed the maximum number of parking by 15 percent.

Burton recognized Lattelle Hall of 1053 Ross Street asked the developers to consider the health, safety and welfare of the students by working out a deal with WVDOH to ensure a nice walkway across University Avenue.

There being no further comments, Burton offered the petitioner a chance at rebuttal.

Williams stated that traffic is not reduced by not building parking in urban areas, rather traffic is reduced by building density in urban areas where people park their cars and utilize other forms of transit. Williams explained the parking deck can't be made smaller as they have to meet a maximum slope and a minimum width and therefore they added a couple floors to provide more parking to the downtown area which will help lessen traffic. Williams referred to the pedestrian bridge and stated the air space is not a problem and stated they will provide the landing space for the bridge but don't have control to the right-of-way or the landing on the other side of the University.

There being no further comments, Burton asked for Staff recommendations.

Fletcher presented the Staff recommendations.

Wattleworth inquired about requiring additional retail and moving the student lounge off the street level. Shaffer noted the petitioner claim's in one of the Finding of Facts that this could affect the hardship and marketability of the building.

Papandreas expressed that he agrees with the floor area ratio argument made by Simon and noted that a way to control the floor area ratio would be to not grant the variance.

Wattleworth asked if there would be a condition placed on the retail. Fletcher explained the petitioner has met the minimum requirements for the non-residential and commercial space.

Wattleworth disagreed and stated the floor area ratio changes the parking calculation. Fletcher explained the information provided clearly explains the calculation and how minimum and maximum number of parking is determined and noted the floor area ratio matter is not a part of the variance application before the Board to exceed the maximum number of parking spaces standard.

Board members decided to review the Findings of Facts separately for Case No. V15-70.

Shaffer made a motion to find in the negative for Finding of Fact 1 as presented; seconded by Papandreas. Motion carried 3-2 with Herbst and Burton voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – The variance will adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents because granting the variance will overstate the allowable floor area ratio (FAR) calculation.

Shaffer made a motion to find in the negative for Finding of Fact 2 as presented; seconded by Papandreas. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 2 – The variance does not arise from special conditions or attributes which pertain to the property for which a variance is sought because the marketability of the development is not a unique or qualifying condition meriting variance relief as requested.

Shaffer made a motion to find in the negative for Finding of Fact 3 as presented; seconded by Papandreas. Motion carried 3-2 with Herbst and Burton voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 3 – The variance will not eliminate an unnecessary hardship nor permit a reasonable use of the land because the marketability of the development is not a hardship meriting variance relief.

Papandreas made a motion to find in the negative for Finding of Fact 4 as presented; seconded by Shaffer. Motion carried 4-1 with Burton voting nay.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 4 – The variance will not allow the intent of the zoning ordinance to be observed nor substantial justice done because granting the variance relief as requested will overstate the allowable floor area ratio (FAR) calculation.

Shaffer moved to deny variance relief for Case No. V15-70 as requested; seconded by Papandreas. Motion carried unanimously.

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

**J. V15-71 / Standard at Morgantown, LLC / 1303 University Avenue:** Request by J. Wesley Rogers, on behalf of Standard at Morgantown, LLC, for variance relief from Article 1351.01(K) as it relates to the minimum transparency standard; Tax Map 26A, Parcels 6 thru 15; B-4, General Business District.

Burton asked if anyone was present to speak in favor of or in opposition to the variance petition for Case No. V15-71.

Burton recognized James Giuliani of 254 Prairie Avenue who referred to Nick's Canteen and expressed favor in doing something similar on University Avenue and made suggestions on how to enhance the transparency on Walnut Street.

Burton recognized Sam Simon of JKL Rentals, LLC who stated the variance requested is a self-imposed hardship and noted there is no special reason for the request other than a change in design.

Burton recognized John Sausen of Omni Associates who stated if the project had more retail on Walnut Street then they could have more transparency.

Burton recognized Lattelle Hall of 1053 Ross Street who referred to handouts that were provided to the Board by Mr. Giuliani, and asked the Board to carefully review the documents for consideration.

There being no further comments, Burton offered the petitioner a chance at rebuttal.

Williams explained the transparency is only in a certain area at the base of the building and is not for the whole buildings. Williams noted it is impossible to step the building down with the slope challenges and the building was designed to accommodate the situation. Williams stated he is willing to look at suggestions to place expander glass in certain areas as a condition with the approval of the variance.

Fletcher referred to site plan drawings included in the hearing packet to further explain the request and expressed concerns with installing spandrel glass in the area close to the man doors.

Wattleworth asked for further explanation of spandrel glass. Williams explained the product and noted it looks like a window from a distance.

There being no further comments, Burton asked for Staff recommendations.

Fletcher presented the Staff recommendations.

Papandreas made a motion to find in the affirmative for Finding of Facts 1-4 for Case No. V15-71 as revised; seconded by Shaffer. Motion carried unanimously.

*NOTE: The following Finding of Fact was included in the motion.*

Finding of Fact No. 1 – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The Developer proposes to create a project that will work in harmony with the surrounding city fabric while also providing a stimulus to the surrounding areas vibrancy. The project will combine multiple parcels which currently have limited or no street front windows into a cohesive street front combining retail and residential uses. Upgraded site lighting and pedestrian access will also positively impact the health and safety of the public and neighboring properties. The project will be a noticeable upgrade to the current sites condition and will provide a modern facility that will be utilized by the neighboring university's students as a residential and commercial facility.

Finding of Fact No. 2 – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The Developer is limited on the Walnut Street frontage to 11% transparency by existing site conditions as well as functional requirements of the proposed building. Walnut Street slopes steeply down to the Monongahela River which limits the glazing opportunity at this street front. Additionally, project access requirements such as parking, loading, and trash removal make up a portion of the Walnut Street front. These site and project restrictions combine to limit the Walnut Street transparencies.

Finding of Fact No. 3 – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

It appears the project, as designed, is a reasonable use of a steeply sloping site with limited street front access points. The project attempts to address and activate the street front with large transparent openings where the site allows along University Avenue while utilizing Walnut Street for other building requirements.

Finding of Fact No. 4 – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The project, as designed, includes at least 60% transparency in concentrated areas of street front retail and building entrances, which are interrupted by solid areas where required by site restrictions or project requirements. The goal of the design is to provide an active street front façade where possible along a highly variable street frontage. The design attempts to find the highest and best use for each of these unique conditions.

Papandreas moved to grant approval for Case No. V15-71 as requested with conditions; seconded by Herbst. Motion carried unanimously.

*NOTE: The following conditions were included in the motion.*

- 1. That Type III Site Plan approval for the Development of Significant Impact must be granted by the Planning Commission and related conditions observed.*
- 2. That minor subdivision petition approval must be granted by the Planning Commission combining Parcels 6 thru 15 of Map 26A and the annulled portion of the Wall Street right-of-way and final plat recorded prior to building permit issuance.*
- 3. That spandrel glass shall, to the satisfaction of the Planning Division, be provided in the area generally marked in the graphic below and shall be framed to complement the rhythm, pattern, and design of the building's other retail windows.*

Burton reminded Mr. Williams that the Board's decision can be appealed to Circuit Court within thirty (30) days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.



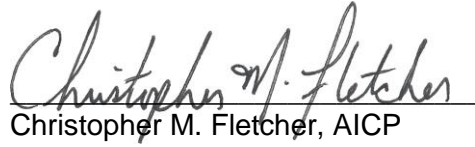
V.     **ANNOUNCEMENTS:** None

VI.    **ADJOURNMENT:** 12:22 a.m.

MINUTES APPROVED:

August 17, 2016

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP